

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)	IB Docket No. 95-91
)	GEN Docket No. 90-357
Establishment of Rules and Policies for the)	RM No. 8610
Digital Audio Radio Satellite Service in the)	PP-24
2310 - 2360 MHz Frequency Band)	PP-86
)	PP-87

OPPOSITION TO PETITIONS FOR RECONSIDERATION

American Mobile Radio Corporation ("AMRC"), by its attorneys, hereby opposes the petitions for reconsideration filed in the above-captioned proceeding^{1/} by the Consumer Electronics Manufacturers Association ("CEMA") and the Cellular Phone Taskforce ("Taskforce").^{2/} The CEMA Petition should be rejected because, among other reasons, AMRC has both the technical capability and the commercial incentive to provide a high quality, national multichannel audio service without the Commission imposing any specific performance requirement.

^{1/} Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, IB Docket No. 95-91, Establishment of the Rules and Policies for the Digital Audio Radio Satellite Service in the 2310 - 2360 MHz Frequency Band, March 3, 1997 ("DARS Order"). In the DARS Order, the Commission determined that it would issue two DARS licenses, and that these licenses would be assigned through a competitive bidding process. On April 2, 1997, AMRC emerged as the winning bidder for one of the two available DARS licenses.

^{2/} Consumer Electronics Manufacturers Association ("CEMA"), Petition for Reconsideration, IB Docket No. 95-91, Establishment of the Rules and Policies for the Digital Audio Radio Satellite Service in the 2310 - 2360 MHz Frequency Band, March 27, 1997 ("CEMA Petition"); Cellular Phone Taskforce ("Taskforce"), Petition for Partial Reconsideration, IB Docket No. 95-91, Establishment of the Rules and Policies for the Digital Audio Radio Satellite Service in the 2310 - 2360 MHz Frequency Band, April 9, 1997 ("Taskforce Petition").

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The Taskforce Petition should be rejected because AMRC will comply with all applicable environmental regulations.

I. CEMA's Proposal is Both Uniquely Demanding and Unnecessary, and Its Petition Should Be Denied by the Commission

In its petition, CEMA reiterates its view that the S-band is inappropriate for satellite DARS,^{3/} and states that its testing demonstrates that DARS is unlikely to become a commercially viable mass media product under the Commission's current regulatory framework. CEMA Petition at 3. CEMA believes that in order for the service to be successful, the Commission must adopt "reasonable performance, coverage, and build-out milestones." Id. at 5. Specifically, CEMA urges the Commission to require satellite DARS licensees to provide "substantial service to at least one-third of the population in their service area within five years of being licensed and two-thirds of the population in the service area within 10 years of license." Id. at 7. CEMA defines substantial service as that which "provides continuous, uninterrupted CD-quality sound to both mobile and fixed receivers in urban and rural environments." Id. DARS licensees unable to satisfy these requirements would forfeit their authorizations.

The Commission should reject CEMA's petition. The CEMA requirement is unnecessary to the development of DARS, as AMRC will have both the technical ability and the commercial incentive to provide a high quality, national multichannel audio service. In addition, CEMA's proposed requirement is qualitatively different from any other construction or build-out standard applied to the commercial wireless services, and is inconsistent with the Commission's customary mode of regulatory oversight. CEMA's proposed standard is not a coverage

^{3/} See "The Consumer Electronics Manufacturers Association Vision for Digital Audio Radio Services," CEMA Petition at Exhibit 1.

requirement, but a qualitative performance standard that would impose an extreme administrative burden on both the DARS licensees and the Commission.

A. The CEMA performance requirement is unnecessary, as the DARS licensees will have both the technical ability and the commercial incentive to provide a high quality, national multichannel audio service

CEMA's proposed requirement is unnecessary to the commercial development of satellite DARS. AMRC has both the technical ability and the commercial incentive to provide a high quality, national multichannel audio service.

The basis for CEMA's proposal is its belief that the S-band is inappropriate for satellite DARS, and that service over these frequencies will be plagued by certain technical difficulties.^{4/} As a result, says CEMA, unless the Commission takes "additional affirmative steps," DARS is likely to be rendered a "limited service receivable only on stationary receivers located in relatively small, unobstructed fractions of the rural countryside." CEMA Petition at 3. CEMA arrived at this view, however, as a result of testing which did not even remotely simulate the satellite systems likely to be implemented by the DARS licensees. Using satellite technology and terrestrial repeaters, AMRC will be able to provide the high quality, nationwide multichannel audio service that CEMA hopes for, and it can do so without the Commission's adoption of the heavy-handed policies recommended by CEMA.

The DARS auction winners also have the commercial incentive to provide such service. While CEMA downplayed the likely effect of the competitive bidding process on the winners'

^{4/} CEMA Petition at 3. To the extent that CEMA argues here for the relocation of satellite DARS to the L-band or any other frequency bands, this argument is procedurally defective and should be ignored by the Commission. The Commission allocated the S-band to DARS in late 1995, and any contention now that the Commission should revisit this decision must be viewed as an extraordinarily late-filed petition for reconsideration.

incentive structure,^{5/} its petition was filed on March 27, several days prior to the DARS auction. AMRC in particular paid almost \$89 million for the right to be a satellite DARS licensee, and the construction and launch of its satellite is expected to require substantial additional expenditures. Clearly, given the need to recoup this considerable investment, AMRC will have a powerful commercial incentive to provide a high quality audio service and to maximize as quickly as possible the size of its potential audience.

B. CEMA proposes a qualitatively different performance requirement that would impose an extreme administrative burden on both the DARS licensees and the Commission

CEMA's proposed service requirement is not only unnecessary, it is inconsistent with the Commission's customary mode of regulatory oversight. CEMA would require that DARS licensees demonstrate their provision of "continuous, uninterrupted CD-quality sound to both mobile and fixed receivers in urban and rural environments." CEMA Petition at 7. This is not a coverage requirement, but a service performance standard that is qualitatively different from any other standard applied to the commercial wireless services.

While CEMA claims to have based its proposal on the requirements imposed on 30 MHz broadband PCS licensees,^{6/} the broadband PCS rule and CEMA's proposed standard would require very different showings. The Commission has characterized its broadband PCS standard as a "construction requirement," and has stated that broadband PCS licensees only have to

^{5/} CEMA Petition at 6.

^{6/} Id. at 7. The Commission requires broadband PCS licensees to serve with a signal level sufficient to provide adequate service to at least one-third of the population in their licensed area within five years of being licensed and two-thirds of the population in their licensed area within 10 years of being licensed. 47 C.F.R. § 24.203(a) (1996). See Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd 4957 (1994) ("PCS Order").

provide “coverage” to the relevant population. PCS Order at 5018-19. Accordingly, to demonstrate compliance with this coverage requirement, a broadband PCS licensee only has to show that its transmitters’ theoretical service contours encompass a sufficient percentage of the population in its service area.^{2/}

In contrast, in order to demonstrate compliance with CEMA’s proposed “continuous, uninterrupted CD-quality sound . . .” requirement, the DARS licensees would have to make an extraordinarily extensive and complex technical showing. They would have to conduct an unprecedented array of field tests, measuring sound quality and signal reception, including building and vehicle penetration, over vast geographic areas. This requirement would impose an enormous administrative burden not only on the DARS licensees, but on the Commission itself.

Thus, the CEMA performance requirement is unreasonable and inappropriate, and should be rejected by the Commission. The Commission’s existing construction requirements for DARS licensees are sufficient.

II. The Taskforce’s Petition is Inappropriate to the DARS Proceeding and Should Be Denied by the Commission

In its petition, the Taskforce expresses the concern that “[m]any electrically sensitive individuals are reporting both health and auditory effects of radiofrequency transmissions in areas of the United States where those transmissions can only be coming from satellites.”^{8/}

^{2/} AMRC would easily meet the kind of theoretical coverage requirement applied in the broadband PCS context. AMRC will provide full coverage of its service area as soon as it begins operating.

^{8/} See Arthur Firstenberg, “Microwaving Our Planet: The Environmental Impact of the Wireless Revolution” (Cellular Phone Taskforce 1996), accompanying Taskforce Petition for Reconsideration, ET Docket 93-62, Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, February 17, 1997.

Taskforce Petition at 2. In light of this fact, the Taskforce urges the Commission to reconsider its decision not to apply power flux-density ("pfd") limits on satellite DARS networks.

Specifically, the Taskforce asks the Commission to require all DARS system to comply with a pfd level at the Earth's surface of -139 dB(w/m²/4 kHz). *Id.* at 2.

The Commission has addressed radiofrequency issues within the last year, adopting comprehensive guidelines for assessing the environmental effects of radiofrequency radiations from transmitters regulated by the Commission.^{9/} While these rules are generally applicable to satellite DARS licensees -- AMRC expects to comply easily with its requirements -- these guidelines do not include any restriction on the pfd levels of DARS satellites. This determination, and the new guidelines generally, were the result of an exhaustive analysis of radiofrequency safety and health issues that includes inputs from the Environmental Protection Agency, the Food and Drug Administration, ANSI, and others with expertise in this area. Accordingly, that rulemaking proceeding is the appropriate forum for the issues that the Taskforce raises.

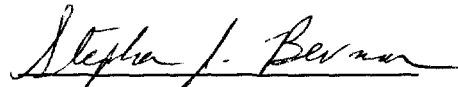
^{9/} Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, 3 CR 1092 (1996).

Conclusion

AMRC is eager to move forward with the construction and launch of its satellite and the operation of its national, high quality multi-channel audio service. It has been seven years since the first DARS application was filed, and to further delay the provision of DARS on the basis of the meritless arguments of these petitioners would be counter to the public interest. Accordingly, AMRC hereby respectfully urges the Commission to expeditiously deny the petitions for reconsideration filed by CEMA and the Taskforce.

Respectfully submitted,

AMERICAN MOBILE RADIO CORP.

A handwritten signature in cursive script, reading "Stephen J. Berman".

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Dated: May 12, 1997

CERTIFICATE OF SERVICE

I, Cindi Smith Rush, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 12th day of May, 1997, I served a true copy of the foregoing Opposition to Petition for Reconsideration by overnight mail upon the following:

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